

1 Michael Reiter (State Bar No. 197768)  
2 Milligan, Beswick, Levine & Knox, LLP  
3 1447 Ford Street, Suite 201  
4 Redlands, CA 92374  
5 (909) 798-3300  
mreiter@mbklaw.org

6 Attorneys for Defendant, William Ung dba  
7 Yummy Donuts and Subs

8 UNITED STATES DISTRICT COURT  
9  
10 CENTRAL DISTRICT OF CALIFORNIA

11	PATRICIA FILARDI, an individual, )	Case No: 5:18-cv-01847-CJC
12	)	
13	Plaintiff, )	DEFENDANT WILLIAM UNG DBA
14	)	YUMMY DONUTS AND SUBS'
15	v. )	REPLY TO PLAINTIFF'S
16	)	OPPOSITION TO MOTION
17	)	FOR SUMMARY JUDGMENT
18	YUMMY DONUTS AND SUBS, a )	
19	business of unknown form; PAUL D. )	
20	SOTO AND TANNIS D. SOTO as )	
21	individuals and trustees of the P. AND )	DATE AND TIME: 1/27/20, 1:30 P.M.
22	T. SOTO REVOCABLE TRUST )	COURTROOM: 7C
23	Dated March 14, 2012; and )	
24	DOES 1-10, inclusive, )	
25	Defendants. )	

26 DEFENDANT, YUMMY DONUTS AND SUBS (Defendant YDS) hereby  
27 replies to Plaintiff's Opposition to Defendant's, Motion for Summary Judgment.

28 **I. It is Not Reasonable to Infer the Access Ramp Location Dictates  
Responsibility of the Access Ramp.**

Plaintiff states that due to the access ramp residing directly in front of  
Defendant YDS' store, that is "reasonable to infer that Defendant controls the space

1 immediately in front of its leased space which is available to its customers.” (Pl. Opp.  
 2 p. 5, ll. 11-12; Doc 35). Defendant contends that this is not a reasonable inference and  
 3 it is obvious that Defendant YDS is not responsible for the access ramp. There are  
 4 two stores on the that side of the building and only one access ramp; the ramp is used  
 5 for both shops Defendant YDS and Rosa Maria’s, and the shops around the corner  
 6 from Defendant YDS. (See photos Ung Decl. Ex. B; Doc 28-3). In fact, all the shops  
 7 within the complex have shared access ramps. Therefore, it is obvious, and not  
 8 reasonable to infer, that simply because the access ramp is in front a certain store, that  
 9 said store is responsible for that access, when said access is used by other stores as  
 10 well.  
 11

12 **II. Defendant YDS has Submitted Competent Evidence.**

13 The Declaration of Ung is based on Defendant’s personal knowledge, and the  
 14 photos have been authenticated by Defendant. Plaintiff simply argues against the  
 15 evidence, rather than show her own facts that show a triable issue.  
 16

17 **III. Defendant YDS has Filed its Opposition to Plaintiff’s Motion to Amend the**  
 18 **Complaint.**

19 As stated in Defendant YDS’ Opposition to Plaintiff’s Motion to Amend  
 20 Complaint, Defendant YDS opposes the motion “...on the ground that Plaintiff has  
 21 known about the identity of the additional party she wishes to name and should have  
 22 added said party long before this current filing of December 24, 2019.” (Def. Opp.  
 23 Mot. Amend. Comp. p. 2, ll. 3-4; Doc. 37). Defendant YDS’ opposition further  
 24 states, in part,  
 25

26 “Plaintiff previously filed with this Court an Amended  
 27 Complaint on July 8, 2019, which indicates that defendant  
 28 Brookside San Mateo Partners, L.P. owns the property at 1154

1 Brookside Avenue, Redland[s] CA 92373. The Amended  
 2 Complaint was rejected by the Court as leave of Court was not  
 3 sought prior to or concurrently when the Amended Complaint was  
 4 filed. Nothing further was done by plaintiff until late December.

5 Plaintiff must have known at or prior to the July 8, 2019  
 6 filing of the Amended Complaint that Brookside San Mateo  
 7 Partners, L.P., was the current owner of the Subject Property  
 8 where Yummy Donuts and Subs is located.

9 Plaintiff could have and has failed to file for leave to file  
 10 her Amended Complaint within a reasonable time of having  
 11 knowledge for the existence of Defendant Brookside San Mateo  
 12 Partners, L.P.

13 Additionally, Plaintiff failed to perform due diligence in  
 14 ascertaining the owner of the property. Relying on a title report is  
 15 not due diligence, since only the record notice in the County of  
 16 San Bernardino's files can be relied upon. To the extent that  
 17 plaintiff used title insurance, her remedy is against the title  
 18 insurer.

19 Plaintiff should have known who the landlord was from the  
 20 start and should have named the actual owner in her original  
 21 complaint. As a matter of common knowledge, this information is  
 22 easily available from the San Bernardino County tax collector  
 23 online and by telephone. Plaintiff did not diligently conduct  
 24 research as to the owner of the property, and as such should not be  
 25 allowed to amend, even with the liberal standard of amendment.  
 26 (*Id.* at pp. 3-4).

27 **IV. Discovery has Closed. Plaintiff may not Obtain Documents that Should**  
 28 **and Could Have Been Discovered Prior to the Close of Discovery.**

Pursuant to the Scheduling Order of this Court dated February 8, 2019,  
 discovery in this matter closed on November 27, 2019 (Sch. Order p. 1, ll. 21-22; Doc  
 21). Plaintiff had ample time and knew as far back as prior to July 8, 2019, the names

1 of the owners of the property and could have obtained any lease documents from  
2 Brookside San Mateo Partners, L.P. Plaintiff did not diligently seek the documents  
3 needed within the time allowed by this Court even though Plaintiff knew from where  
4 to obtain the documents needed. Plaintiff should not be allowed now after the close of  
5 discovery, to obtain documents that could have been timely obtained prior to the close  
6 of discovery.  
7

8 **V. Defendant YDS will be Prejudiced if Plaintiff is Allowed to Conduct**  
9 **Additional Discovery after the Close of Discovery.**

10 Allowing Plaintiff to conduct after the discovery has closed will prejudice  
11 Defendant YDS. Plaintiff knew the identity of Brookside San Mateo Partners, L.P.,  
12 prior to July 8, 2019, and had ample time to conduct discovery. Plaintiff choose not to  
13 resubmit the rejected Amended Complaint and choose to wait until December 24,  
14 2019 to file its motion for leave to file its Amended Complaint. Plaintiff's own delay  
15 bars her from conducting discovery after discovery has closed.  
16

17 **VI. Defendant YDS did Not Make a Claim for Attorney's Fees in its Motion for**  
18 **Summary Judgment.**

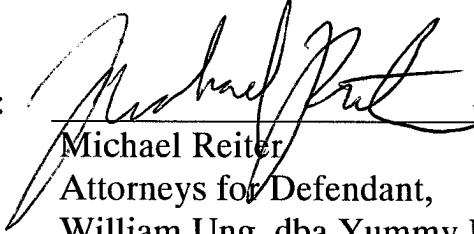
19 Defendant YDS did not make a claim for attorney's fees in its Motion for  
20 Summary Judgment. Thus, Plaintiff is premature in filing an objection to a request for  
21 attorney's fees, and no such claim has been made at the time of the filing of the  
22 motion for summary judgment.  
23

24 It is for the above reasons and those stated in its Motion for Summary  
25 Judgment, that Defendant Yummy Donuts and Subs be granted summary judgment in  
26 its favor and for all other proper relief.  
27  
28

1 Dated: January 10, 2020  
2  
3

4 MILLIGAN, BESWICK, LEVINE & KNOX, LLP

5  
6  
7 By:

  
Michael Reiter  
Attorneys for Defendant,  
William Ung, dba Yummy Donuts and Subs

1 **PROOF OF SERVICE BY MAIL**

2 The undersigned declares as follows: At the time of service I was over 18  
3 years of age and not a party to this action. My business address is 1447 Ford Street,  
4 Suite 201, Redlands, CA 92374, which is in the County, City and State where this  
5 mailing occurred.

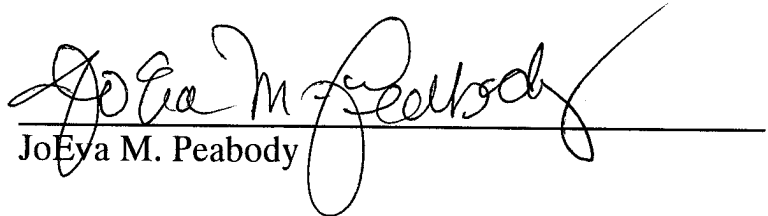
6 On January 10, 2020, I served the document described as: YUMMY DONUTS AND  
7 SUBS' REPLY TO PLAINTIFFS OPPOSITION TO MOTION FOR SUMMARY  
8 JUDGMENT on all interested parties in this action:

9 Craig G. Côté, Esq.  
10 Manning Law APC  
11 20062 S.W. Birch Street, Suite 200  
12 Newport Beach, CA 92660

13 I served a true copy of the document above by depositing it in the United  
14 States Mail in a sealed envelope with the postage fully prepaid to the addresses  
15 above.

16 I certify under the penalty of perjury that the foregoing is true and correct.

17 Executed on January 10, 2020, at Redlands, California.

18  
19   
20 JoEya M. Peabody  
21  
22  
23  
24  
25  
26  
27  
28